



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (808-544-8399) and FIRST CLASS MAIL

APR 18 2011

Brian A. Kang, Esq.
Watanabe Ing LLP
999 Bishop Street, 23rd Floor
Honolulu, HI 96813

RE: MUR 6344
Hanabusa 2010
and Patsy Saiki, in her official
capacity as treasurer

Dear Mr. Kang:

On November 5, 2010, the Federal Election Commission notified your client, Hanabusa 2010 and Patsy Saiki, in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

On April 5, 2011, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe Hanabusa 2010 and Patsy Saiki, in her official capacity as treasurer, violated 2 U.S.C. § 441b(a). The Factual and Legal Analysis, explaining the Commission's finding, is enclosed.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Phillip A. Olaya, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENTS:** Hanabusa 2010, and Patsy Saiki MUR: 6344
7 in her official capacity
8 as Treasurer
9

10 **I. FACTUAL BACKGROUND**

11 **A. Introduction**

12 This matter concerns Georgette Yaindl's allegations that United Public Workers,
13 AFSCME Local 646, AFL-CIO and union managers Clifford "Chip" Uwayne, Dayton
14 Nakanelua, and Laurie Santiago ("UPW" or "the union") coerced union employees to
15 support Hawaii First Congressional District candidate Colleen Hanabusa's candidacy in a
16 special congressional election on May 22, 2010. The complaint also can be read as
17 suggesting that the UPW campaign activities were coordinated with and resulted in a
18 prohibited union in-kind contribution to Colleen Hanabusa's campaign committee.

19 UPW is the exclusive bargaining representative for approximately 11,800 public
20 sector employees in Hawaii. See UPW Response at 3. UPW's staff consists of
21 approximately 39 employees. See *id.* at 4. Clifford "Chip" Uwayne, Dayton Nakanelua,
22 and Laurie Santiago are all union managers. The union operates a registered state PAC,
23 but does not have a federal PAC. *Id.* at 3 (citing Ex. 5). UPW acknowledges it is a
24 "political entity" that endorses candidates and "plan[s], organiz[es], and coordinat[es] a
25 wide range of political actions," including "sign-waving, coffee hours, friend-to-friend
26 cards, phone banking, mail-outs, house-to-house canvassing, [and] rallies" to support
27 those candidates. *Id.*

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1 Hanabusa 2010 is the principal campaign committee of Colleen Hanabusa, then a
2 member of the Hawaii Senate and a candidate in the May 2010 special election in
3 Hawaii's First Congressional District. See Amended Statement of Organization, dated
4 Oct. 28, 2009. The Committee's disclosure reports do not reflect receipt of any financial
5 or in-kind contributions from UPW, UPW's State PAC, or any UPW employees.

6 Further, neither UPW nor its state PAC filed any independent expenditure or
7 electioneering communications reports as to activities in support of Hanabusa.

8 **B. UPW's Campaign Activities**

9 In mid-to-late March 2010, UPW e-mailed its employees a notice that the union
10 would sign-wave to support Hanabusa every Friday at 4:30 p.m. See Complaint at ¶ 8.
11 Then, UPW required all employees to attend a staff meeting on April 5, 2010, at which
12 the union asked employees to support Hanabusa 2010 by sign-waving, phone banking,
13 canvassing, and making financial contributions to the Committee. See *id.* at ¶¶ 12, 16.
14 The union notified employees by e-mail about the mandatory meeting "[s]ometime
15 within ten (10) or so days prior to April 5, 2010," and required employees to formally
16 request and obtain approval from Mr. Nakanelua if they were unable to attend. See *id.* at
17 ¶ 12. Except for three or four employees, the entire staff was in attendance, including
18 executive staff, business agents, receptionists, clerks, and UPW's custodian. See *id.* at
19 ¶ 14. The union's campaign to support Hanabusa was similar to previous instances when
20 the union had asked employees to participate in political campaign activities for state and
21 local candidates. See *id.* at ¶ 6. Ms. Yaendl states that she did not participate in any of
22 these prior campaign-related activities for state and local candidates, and UPW Executive

1 Assistant Uwaine mentioned her failure to sign-wave after being asked to do so to her.

2 *See id.*

3 According to Ms. Yaindl, at the April 5th meeting, Mr. Nakanelua told employees
4 that they were being asked to sign-wave on Fridays, phone bank Monday through
5 Thursday evenings, canvass door-to-door Saturday mornings, and make financial
6 contributions. *See id.* at ¶ 16. Mr. Nakanelua also reportedly stated that “any staff who
7 may need to request an exemption from any of these activities should ‘come see [him].’”
8 *Id.* at ¶ 17 (paraphrasing Nakanelua). Mr. Uwaine then reportedly stated something like,
9 Nakanelua is “‘too kind’” or ‘being too easy.’” *Id.* at ¶ 18. Uwaine then reportedly said,
10 “It is expected that all staff will sign wave on Fridays [afternoons], phone bank Monday
11 through Thursdays [evenings], and canvass on Saturdays [mornings].” *Id.* at ¶ 18. Ms.
12 Yaindl also claims that Mr. Uwaine directed employees, “who may have a part time job
13 on Saturdays, or who may be involved in other activities like coaching, you are to inform
14 your employer or team that you are not going to be available to them for the next six (6)
15 weeks.” *Id.* at ¶ 21.

16 UPW does not dispute Ms. Yaindl’s description of the April 5th meeting regarding
17 its planned activities in support of Hanabusa’s candidacy. UPW, however, maintains that
18 its campaign activities for employees were voluntary. *See* UPW Responses at 12. UPW
19 also asserts that *Citizens United* permits the union to make independent expenditures,
20 such as instructing staff to engage in campaign activities. *See id.* at 12-13.

21 II. LEGAL ANALYSIS

22 The Federal Election Campaign Act of 1971, as amended (“the Act”), prohibits
23 corporations and labor organizations from making contributions in connection with any

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1 federal election, including in-kind contributions. 2 U.S.C. § 441b(a), (b)(2); 11 C.F.R.
2 § 100.7(a)(1)(iii)(B). The Act provides that expenditures, electioneering
3 communications, or republished campaign materials made in coordination with a
4 committee constitute in-kind contributions to that candidate or party committee. See
5 2 U.S.C. § 441a(a)(7).

6 The Commission's regulations provide a three-prong test to determine whether a
7 communication is coordinated.¹ All three prongs of the test must be satisfied to support a
8 conclusion that a coordinated communication occurred. 11 C.F.R. § 109.21(a); see also
9 Explanation and Justification for Final Rules on Coordinated Communications, 71 Fed.
10 Reg. 33190 (June 8, 2006) and Explanation and Justification for Regulations on
11 Coordinated and Independent Expenditures, 68 Fed. Reg. 421 (Jan. 3, 2003). Under
12 11 C.F.R. § 109.20(b), a coordinated expenditure that is not made for a communication is
13 either an in-kind contribution or coordinated party expenditure that must be reported as
14 an expenditure. The campaign activities in this matter, however, appear to involve
15 communicative activities that would not invoke the application of part 109.20(b).

16 The available facts indicate that while the communication meets the payment and
17 content prongs via UPW's expenditures for pro-Hanabusa campaign activities; it did not
18 meet the conduct prong. The Hanabusa Committee explicitly denies any knowledge or
19 involvement with UPW's campaign activities. See Hanabusa 2010 Response at 1; see
20 also *id.* (Hamakawa Aff. at ¶ 6) (stating "To my knowledge, the Hanabusa 2010
21 campaign had no involvement with, or knowledge of, the alleged acts and

¹ Recently revised regulations on coordinated communications include a new content standard at 11 C.F.R. § 109.21(c)(5) for communications that are the functional equivalent of express advocacy and a new safe harbor for certain business and community communications. See Coordinated Communications, 75 Fed. Reg. 55947 (Sept. 15, 2010).

1 communications by [Respondents] as described in the Complaint.”). While UPW’s
2 Response does not comment on its interaction with Hanabusa 2010, it claims to have
3 engaged in the type of independent expenditures authorized by *Citizens United*.

4 In the absence of information suggesting the union satisfied the conduct prong of
5 the coordination regulations, the union’s campaign activities do not appear to result in
6 prohibited in-kind contributions to Hanabusa 2010. Accordingly, the Commission finds
7 no reason to believe that Hanabusa 2010 accepted prohibited corporate in-kind
8 contributions in violation of 2 U.S.C. § 441b(a).